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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. 10013014-1IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICEInventor(s): **Blair et al.**

Confirmation No.: 8495

Application No.: 09/992,666

Examiner: Ramsey Refai

Filing Date: 11/19/2001

Group Art Unit: 2154

Title: Method and System for Gathering Data Using Automatic Appliance Failover

Mail Stop Appeal Brief-Patents  
Commissioner For Patents  
PO Box 1450  
Alexandria, VA 22313-1450TRANSMITTAL OF APPEAL BRIEFTransmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 6/18/2007.The fee for filing this Appeal Brief is (37 CFR 1.17(c)) Fee Previously Paid

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:☐ 1st Month  
\$120☐ 2nd Month  
\$450☐ 3rd Month  
\$1020☐ 4th Month  
\$1590☐ The extension fee has already been filed in this application.☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.Please charge to Deposit Account 08-2025 the sum of \$ 0. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.☐ A duplicate copy of this transmittal letter is enclosed.☐ I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
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Typed Name: Doreen Zabinski

Signature: Doreen Zabinski

Respectfully submitted,

Blair et al.

By Petar Kraguljac

Petar Kraguljac

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PATENT  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	Examiner: Ramsey Refai
Blair, et al.	)	
	)	Art Unit: 2154
Serial No.: 09/992,666	)	
	)	
Filed: November 19, 2001	)	
	)	
For: METHOD AND SYSTEM FOR	)	
GATHERING DATA USING AUTOMATIC	)	
APPLIANCE FAILOVER	)	
	)	
Date of Final Office Action: 5-10-2007	)	Attorney Docket No.:
	)	10013014-1
Notice of Appeal Filed: 6-18-2007	)	
	)	
	)	

August 16, 2007

## APPEAL BRIEF

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is timely provided to support the Notice of Appeal filed June 18, 2007.

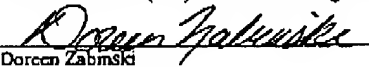
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Dorcen Zabinski

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{1262902:}

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**1. Real Party in Interest:**

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, USA.

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**2. Related Appeals and Interferences**

There are no other prior and/or pending appeals, interferences, or judicial proceedings that are related to, directly affect, or that will be directly affected by or have a bearing on the Board's decision.

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**3. Status of Claims**

Claims 1-11 and 20-23 are pending in the application.

Claims 1-8 and 20-23 stand rejected.

Claims 9-11 stand objected to, but would be allowable if rewritten in independent form.

Claims 12-19 were cancelled.

The rejections of claims 1-8 and 20-23 are appealed.

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**4. Status of Amendments**

No amendments were filed subsequent to the Final Office Action.

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## 5. Summary of Claimed Subject Matter

Claims 1, 6 and 20 are in independent form. In general, the subject matter is directed to a method and system for gathering data using automatic appliance failover. (Title). For example, Figure 1 illustrates one embodiment where a central controller 20 communicates with remote appliances 30a, 30b, 30c, 30d through a network 16, and the appliances can communicate with remote devices 34 (e.g. printers) through a network 36. (See specification, paragraphs [0025] and [0026]).

### Independent Claim 1

Claim 1 is directed to a method for configuring data communication paths between a central controller and a plurality of printing devices via a plurality of appliances. (See, specification, Figure 2). Claim 1 recites ensuring one or more appliances of the plurality of appliances are active where an appliance is a computer remote from the central controller configured to collect diagnostic data from one or more of the plurality of printing devices and to transmit the diagnostic data to the central controller. (See, specification, paragraphs [0024], [0027], [0028] and [0035]).

Claim 1 further recites, for each of the printing devices, determining communication capabilities with the one or more appliances to determine communication paths between the plurality of printing devices and the one or more appliances. (See, specification, paragraphs [0028] and [0029]). Claim 1 also recites transmitting signals indicative of the communication capabilities to the central controller. (See, specification, paragraph [0030]). Finally, claim 1 recites mapping respective communication paths between the central controller and the printing devices via the one or more appliances as a function of the communication capabilities to obtain an automatic appliance failover to allow diagnostic data to be collected from a selected printing device by way of multiple appliances. (See, specification, paragraphs [0030], [0032] and Figure 2, block 106).

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Independent Claim 6

Claim 6 is directed to a method for gathering diagnostic data, which are associated with a plurality of printing devices, by a central processing unit via a plurality of intermediate collectors that are connected to one or more of the plurality of printing devices through a network, where an intermediate collector is a computer remote from the control processing unit configured to collect diagnostic data from a selected printing device. (See, specification, Figure 2). Claim 6 recites determining which of the plurality of intermediate collectors are capable of communicating with one or more of the plurality of printing devices to obtain a communication map to allow an automatic intermediate collector failover to occur if an intermediate collector fails to operate. (See, specification, paragraphs [0028], [0029], [0030] and Figure 2, blocks 102, 104 and 106).

Claim 6 further recites receiving a notification signal within the central processing unit that one of the intermediate collectors is available. (See, specification, paragraph [0032]). Claim 6 also recites identifying one of the printing devices for which the diagnostic data is desired. (See, specification, paragraph [0032]). Next, claim 6 recites determining whether the identified printing device is capable of communicating with the available intermediate collector. (See, specification, paragraph [0032]).

Continuing, claim 6 recites if the identified printing device is capable of communicating with the available intermediate collector, transmitting a request signal from the central processing unit to the available intermediate collector requesting the diagnostic data for the identified printing device. (See, specification, paragraph [0036] and Figure 2, block 126). Finally, claim 6 recites transmitting signals indicative of the diagnostic data from the identified printing device to the central processing unit via the available intermediate collector. (See, specification, paragraph [0036] and Figure 2, block 128).



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### Independent Claim 20

Claim 20 is directed to a system comprising a plurality of printing devices (Figure 1, reference designator (34)) and a plurality of appliances where an appliance is a computer configured to collect diagnostic data from one or more of the plurality of printing devices (Figure 1, reference designator (30)). (See, specification paragraph [0025]). Claim 20 further recites a communication network configured to provide a plurality of communication paths between components connected to the communication network. (See, Figure 1, reference designator (36) and specification, paragraph [0025]).

Claim 20 also recites the plurality of printing devices and the plurality of appliances being connected to the communication network where communication paths are provided between one or more of the plurality of printing devices and one or more of the plurality of appliances. (See, specification, paragraph [0025]). Claim 20 further recites a controller remote from the appliances configured to communicate with the plurality of appliances and being configured to generate a map of the communication paths between the printing devices and the appliances based on signals received from the plurality of appliances. (See, Figure 1, reference designator (14) and specification, paragraph [0029]).

Claim 20 recites the controller being configured to receive, from a first appliance from the plurality of appliances, diagnostic data relating to a selected printing device. (See, specification paragraphs [0034] and [0035]). Finally, claim 20 recites the controller being configured to perform an automatic appliance failover to a second appliance using the map of the communication paths if the first appliance is disabled in order to receive the diagnostic data relating to the selected printing device. (See, specification paragraphs [0034] and [0035]).

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**6. Grounds of Rejection to be Reviewed on Appeal**

The following grounds of rejection are to be reviewed on appeal:

I. Whether claims 1-8 and 20-23 are unpatentable under 35 U.S.C. §103(a) as being obvious over Bare (US 2003/0016624) in view of Lodwick (US 6,978,299).

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7. **Argument**

I. **Whether Claims 1-8 and 20-23 are unpatentable under 35 U.S.C. §103(a) as being obvious over Bare (US 2003/0016624) in view of Lodwick (US 6,978,299)**

**Bare (US 2003/0016624) is Not a Proper §103 Reference**

Bare has been applied as a §103 reference and only qualifies as prior art 35 U.S.C. 102(e). Both Bare and the subject application are commonly assigned to Hewlett-Packard Development Company L.P. and/or were subject to obligation of assignment to the same assignee at the time the inventions were made. Appellant respectfully submits that pursuant to 35 U.S.C. §103(c)(1), Bare is not available as a §103 reference and cannot be the basis of a prima facie obviousness rejection. Therefore, the obviousness rejections of claims 1-8 and 20-23 are improper and should be reversed.

**There is No Motivation to Combine the References**

Appellant respectfully submits that the proposed combination of Bare and Lodwick is improper since it would not be obvious to combine the references. Thus, a prima facie obviousness rejection has not been established.

Bare is directed to a switch-to-switch protocol and load balancing:

“The invention of this application is a new switch-to-switch protocol for controlling switches operable in accordance with the protocol. The protocol enables load balancing communication traffic over multiple active switches in a network.” (Bare, page 5, [0071], lines 1-5).

Lodwick is directed to a “Print driver apparatus and methods for forwarding a print job over a network.” (See, Title). Lodwick states “A print driver is provided which is capable of forwarding one or more print jobs over a network.” (See, Abstract, Summary of Invention).

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Thus, Bare and Lodwick are very different inventions that relate to very different technical areas. One of ordinary skill in the art would have no reason or motivation from reading Bare or Lodwick to search for and/or combine the teachings of the other reference. The requisite teaching, suggestion, or motivation to combine these references does not exist and has not been proven in the Final Office Action. A prima face obviousness rejection has not been established and the rejection should be reversed.

Regarding the motivation to combine as proposed in the Final Office Action (page 4, lines 9-13), the proposed motivation is simply constructed from the language of the present claims. Neither the language nor the reasoning used comes from the teachings of the references. Rather, improper hindsight has been used to create the motivation and the combination of references. Thus, a proper motivation has not been established and the rejection should be reversed.

The References Fail to Teach or Suggest Claims 1-8 and 20-23

Independent claim 1

Claim 1 is directed to a method for configuring data communication paths between a central controller and a plurality of printing devices via a plurality of appliances. Figure 1 of the present application shows one embodiment where a central controller 20 communicates with remote appliances 30a, 30b, 30c, 30d through a network 16, and the appliances can communicate with remote devices 34 (e.g. printers) through a network 36. Claim 1 recites that an appliance is a computer remote from the central controller configured to collect diagnostic data from one or more printing devices and that the method includes mapping respective communication paths between the central controller and the printing devices to obtain an automatic appliance failover to allow diagnostic data to be collected from a selected printing device by way of multiple appliances.

Bare is directed to a network of hosts connected through switches (see Figures 1 or 7). Appellant finds no discussion in Bare of a central controller or a configuration with a

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central controller as recited in claim 1. Thus, Bare fails to teach or suggest the claimed configuration of a controller, appliances and printing devices as recited in claim 1 and how the components are configured to function together. Bare fails to support the rejection for which it is relied upon. Lodwick's network configuration is even more different (see Figure 1) and thus fails to cure the deficiencies of Bare.

Thus, even if the references are combined, they fail to teach or suggest the recited combination of features recited in claim 1. A prima facie obviousness rejection has not been established and the rejection should be reversed. Accordingly, the rejections of dependent claims 2-5 are also improper and should be reversed. All claims should now be allowed.

Independent claim 6

Claim 6 recites determining which of the plurality of intermediate collectors are capable of communicating with one or more of the plurality of printing devices to obtain a communication map to allow an automatic intermediate collector failover to occur if an intermediate collector fails to operate. Claim 6 further recites that the intermediate collectors are computer remotes from a central processing unit.

As explained previously, Bare is directed to a network of hosts connected through switches (see Figures 1 or 7). Appellant finds no discussion in Bare of a central processing unit or a communicating with a central controller as recited in claim 6. Thus, Bare fails to teach or suggest the claimed method. Bare fails to support the rejection for which it is relied upon. Lodwick's network configuration is even more different (see Figure 1) and thus fails to cure the deficiencies of Bare. Furthermore, there is no teaching or suggestion of determining which of the plurality of intermediate collectors are capable of communicating with one or more of the plurality of printing devices to obtain a communication map to allow an automatic intermediate collector failover to occur if an intermediate collector fails to operate as recited in claim 6.

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Therefore, the combination of Bare with Lodwick still fails to teach or suggest the recited features of claim 6 and fails to establish a prima facie obviousness rejection. The rejection of claim 6 is improper and should be reversed. Accordingly, the rejections of dependent claims 7-11 are also improper and should be reversed. All claims should now be allowed.

Independent claim 20

Claim 20 recites a system comprising a plurality of printing devices and a plurality of appliances where an appliance is a computer configured to collect diagnostic data from one or more of the plurality of printing devices. Claim 20 further recites a controller remote from the appliances being configured to perform an automatic appliance failover to a second appliance using a map of the communication paths if communication with the first appliance fails in order to receive the diagnostic data relating to the selected printing device.

As explained previously, Bare is directed to a network of hosts connected through switches (see Figures 1 or 7). Appellant finds no discussion in Bare of a central controller or a configuration with a central controller as recited in independent claim 20. Thus, Bare fails to teach or suggest the claimed configuration of a controller, appliances and printing devices as recited in claim 20 and fails to teach or suggest how the components are configured to function together as recited. Bare fails to support the rejection for which it is relied upon. Lodwick's network configuration is even more different (see Figure 1) and thus fails to cure the deficiencies of Bare.

Thus, even if the references are combined, they fail to teach or suggest the recited combination of features recited in claim 20. A prima facie obviousness rejection has not been established and the rejection should be reversed. Accordingly, the rejections of dependent claims 21-23 are also improper and should be reversed. All claims should now be allowed.

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Whether the level of ordinary skill in the art has been properly ascertained under MPEP §2141.03

MPEP §2141.03 requires that Office Actions ascertain and describe the level of the hypothetical person of ordinary skill in the art so that objectivity can be maintained. Here the Office Actions neither ascertained nor reported on the level of ordinary skill in the art. Thus, all the rejections are improper and are appealed.

The MPEP requires that the Office Action ascertain and describe the level of ordinary skill so that objectivity can be maintained. MPEP §2141.03 reads:

The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry. *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991). The examiner must ascertain what would have been obvious to one of ordinary skill in the art at the time the invention was made, and not to the inventor, a judge, a layman, those skilled in remote arts, or to geniuses in the art at hand. *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 218 USPQ 865 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984).

Here the Office Action neither ascertains nor reports on the level of ordinary skill in the art. Since the Examiner maintained Bare and Lodwick as analogous art, then the level of ordinary skill in the art should have been clearly ascertained. The skill level has not been ascertained. Furthermore as explained previously, Appellant does not believe one of ordinary skill in the art would find it obvious to combine these references due to their very different technical areas. Thus, resolving the level of ordinary skill in the art is even more important. For this additional reason, the rejections are improper and should be reversed.

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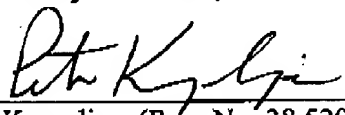
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Conclusion

For the reasons set forth above, a prima facie obviousness rejection has not been established for any claim. Thus, all rejections are improper and should be reversed. Appellant respectfully requests that the Board of Appeals overturn the Examiner's rejections and allow all pending claims. Accordingly, claims 1-8 and 20-23 patentably and unobviously distinguish over the references of record and are now in condition for allowance. An early allowance of all claims is earnestly solicited.

Respectfully submitted,

Aug. 16, 2007  
Date

  
Peter Kraguljac (Reg. No. 38,520)  
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McDonald Hopkins LLC  
600 Superior Avenue, E.  
Cleveland, OH 44114



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## 8. Claims Appendix

1. A method for configuring data communication paths between a central controller and a plurality of printing devices via a plurality of appliances, the method comprising:

ensuring one or more appliances of the plurality of appliances are active where an appliance is a computer remote from the central controller configured to collect diagnostic data from one or more of the plurality of printing devices and to transmit the diagnostic data to the central controller;

for each of the printing devices, determining communication capabilities with the one or more appliances to determine communication paths between the plurality of printing devices and the one or more appliances;

transmitting signals indicative of the communication capabilities to the central controller; and

mapping respective communication paths between the central controller and the printing devices via the one or more appliances as a function of the communication capabilities to obtain an automatic appliance failover to allow diagnostic data to be collected from a selected printing device by way of multiple appliances.

2. The method for configuring data communication paths as set forth in claim 1, further including:

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for each of the printing devices, identifying an optimal path between the appliance and the printing device; and

wherein the mapping includes:

mapping the respective communication paths between the central controller and the printing devices as a function of the optimal paths.

3. The method for configuring data communication paths as set forth in claim 2, wherein the identifying includes at least one of:

determining one of a plurality of paths between a selected appliance and a selected printing device having a least number of hops; and

determining one of a plurality of paths between the selected appliance and the selected printing device achieving a shortest communication time.

4. The method for configuring data communication paths as set forth in claim 1, further including:

for each of the printing devices, determining a second communication capability between a second appliance and the printing device;

transmitting signals indicative of the second communication capabilities to the central controller; and

wherein the mapping includes:

mapping the respective communication paths between the central controller and the printing devices via the first and second appliances as a function of the first and second communication capabilities.

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5. The method for configuring data communication paths as set forth in claim 4, wherein the mapping includes:

substantially balancing respective printing device loads across the appliances.

6. A method for gathering diagnostic data, which are associated with a plurality of printing devices, by a central processing unit via a plurality of intermediate collectors that are connected to one or more of the plurality of printing devices through a network, where an intermediate collector is a computer remote from the control processing unit configured to collect diagnostic data from a selected printing device, the method comprising:

determining which of the plurality of intermediate collectors are capable of communicating with one or more of the plurality of printing devices to obtain a communication map to allow an automatic intermediate collector failover to occur if an intermediate collector fails to operate;

receiving a notification signal within the central processing unit that one of the intermediate collectors is available;

identifying one of the printing devices for which the diagnostic data is desired;

determining whether the identified printing device is capable of communicating with the available intermediate collector;

if the identified printing device is capable of communicating with the available intermediate collector:

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transmitting a request signal from the central processing unit to the available intermediate collector requesting the diagnostic data for the identified printing device; and  
transmitting signals indicative of the diagnostic data from the identified printing device to the central processing unit via the available intermediate collector.

7. The method for gathering diagnostic data as set forth in claim 6, further including:

determining optimal paths from each of the printing devices to the central processing unit via respective ones of the intermediate collectors; and  
wherein the determining whether the identified printing device is capable of communicating with the available intermediate collector includes:  
determining whether the identified printing device has an optimal path including the available intermediate collector.

8. The method for gathering diagnostic data as set forth in claim 7, further including:

if the central processing unit has not received the notification signal for a predetermined time that one of the intermediate collectors is available, retrieving the signals indicative of the diagnostic data for the printing devices having the respective optimal paths including the intermediate collector via another one of the intermediate collectors.

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20. A system comprising:
- a plurality of printing devices;
  - a plurality of appliances where an appliance is a computer configured to collect diagnostic data from one or more of the plurality of printing devices;
  - a communication network configured to provide a plurality of communication paths between components connected to the communication network;
  - the plurality of printing devices and the plurality of appliances being connected to the communication network where communication paths are provided between one or more of the plurality of printing devices and one or more of the plurality of appliances;
  - a controller remote from the appliances configured to communicate with the plurality of appliances and being configured to generate a map of the communication paths between the printing devices and the appliances based on signals received from the plurality of appliances;
  - the controller being configured to receive, from a first appliance from the plurality of appliances, diagnostic data relating to a selected printing device; and
  - the controller being configured to perform an automatic appliance failover to a second appliance using the map of the communication paths if the first appliance is disabled in order to receive the diagnostic data relating to the selected printing device.

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21. The system of claim 20 further including means for automatically mapping the communication paths based on signals received from the plurality of appliances.

22. The system of claim 20 further including means for ensuring each of the appliances is active.

23. The system of claim 20 further including means for identifying addresses of the appliances and addresses of the printing devices with which the appliances are capable of communicating.

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**9. Evidence Appendix**

None. There is no extrinsic evidence.

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**10. Related Proceedings Appendix**

None. There are no related proceedings.